United Nations CAT/C/56/D/580/2014

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
9 February 2016

Original: English

Committee against Torture

Communication No. 580/2014

Decision adopted by the Committee at its fifty-sixth session (9 November-9 December 2015)

Submitted by:	*F.K. v. Denmark* (represented by counsel Niels-Erik Hansen)
Alleged victim:	The complainant
State party:	Denmark
Date of complaint:	19 December 2013 (initial submission)
Date of present decision:	23 November 2015
Subject matter:	Deportation to Turkey
Procedural issues:	Admissibility – manifestly ill-founded; non-exhaustion of domestic remedies
Substantive issues:	Non-refoulement; torture; cruel, inhuman or degrading treatment or punishment
Articles of the Convention:	3, 12 and 16

GE.16-01710(E)

Please recycle

Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-sixth session)

concerning

Communication No. 580/2014*

Submitted by:	F.K. (represented by counsel Niels-Erik Hansen)
Alleged victim:	The complainant
State party:	Denmark
Date of complaint:	19 December 2013 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2015,

Having concluded its consideration of complaint No. 580/2014, submitted to it by F.K. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainant is F.K., a national of Turkey of Kurdish ethnicity born in 1990, residing in Denmark. He claims that his deportation to Turkey would constitute a violation of his rights under article 3 of the Convention. He also alleges violations of his rights under articles 12 and 16 of the Convention. He is represented by counsel, Niels-Erik Hansen.[1]

1.2 Under rule 114, paragraph 1, of its rules of procedure, the Committee requested the State party, on 2 January 2014, not to expel the complainant to Turkey while the complaint was being considered.

Facts as presented by the complainant

2.1 The complainant is of Turkish nationality and Kurdish ethnicity. He submits that, between 2006 and 2010, he was arrested on numerous occasions for a period of 3-10 days and subjected to torture by the Turkish authorities. He was questioned about his knowledge

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Abdoulaye Gaye, Sapana Pradhan-Malla, George Tugushi and Kening Zhang. Pursuant to rule 109 of the Committee's rules of procedure, Jens Modvig did not participate in the consideration of the communication.

[1] Denmark made a declaration under article 22 of the Convention on 27 May 1987.

of Kurdish organizations, including the Kurdish Workers Party (PKK). He was beaten with batons, stripped naked, hung upside down and doused with ice-cold water. The last such detention happened in March 2010.

2.2 In 2008, the complainant was called for military service in Turkey. Fearing he would be forced to fight against other Kurds (against PKK, for example), he refused to go. He was also afraid that, during the military service, he would be subjected to inhuman treatment due to his ethnicity. He further feared that, if returned, he would be imprisoned for evasion of military service and subjected to inhuman treatment in prison. He also argues that, since Turkey has no alternative military service, his prison sentence will be followed by "forced performance of the military service" and that the latter will amount to torture and inhuman treatment.

2.3 The complainant arrived in Denmark in November 2010. He applied for asylum on 13 November 2012. On 31 May 2013, the Danish Immigration Service rejected his application. On 30 August 2013, his appeal of this decision was dismissed by the Danish Refugee Appeals Board, which denied his request for a medical examination for signs of torture. The complainant contends that he has exhausted all available and effective domestic remedies, as it is not possible to file appeals against decisions of the Board.

2.4 On 4 November 2013, the complainant was arrested by the Danish police. On 6 November 2013, the court in the town of Hillerød ordered his detention until 3 December 2013. On 3 December 2013, the same court extended the detention until 17 December 2013.

2.5 The complainant submits that the police had made arrangements to take him to the Turkish Embassy on 10 December 2013. Since he protested, on 12 December 2013, the police brought him to court in order for it to decide whether he could be brought by force to the Turkish Embassy, which it allowed. The complainant appealed that decision but, while the appeal was still under consideration, on 18 December 2013, the police tried to force him to go to the Turkish Embassy. Because he was afraid that would focus the attention of the Turkish authorities on him, the complainant resisted and made cuts on his arms and torso. The detention centre guards disregarded that and handed him over, half-naked and bleeding, to the police, who then drove him to Copenhagen, but before reaching the Embassy they reconsidered and returned him to the detention centre. He was not allowed to see a doctor but was treated by a nurse upon his return to the prison cell. Consequently, he went on a hunger strike.

The complaint

3.1 The complainant claims that the State party would violate his rights under article 3 of the Convention by deporting him to Turkey. He asserts that he had been subjected to torture in the past and that the State party did not dispute that.

3.2 The complainant also maintains that the State party violated article 3 (2) of the Convention by infringing upon procedural rights during the asylum process. He notably submits that the Refugee Appeals Board denied him the right to a medical examination, which would have confirmed the incidents of past torture. He further submits that his asylum application was rejected on the ground of lack of credibility, but the Board decision was not unanimous, with some members disagreeing. Furthermore, he raises the concern that asylum seekers cannot appeal the Board's decisions in court.[2]

[2] The complainant refers to the concluding observations of the Committee on the Elimination of Racial Discrimination on the sixteenth and seventeenth periodic reports of Denmark (CERD/C/DEN/CO/17).

3.3 Furthermore, the complainant maintains that the way the Danish authorities treated him and, in particular, the attempt to forcibly hand him over to the Turkish embassy in Copenhagen violated his rights under articles 12 and 16 of the Convention.

3.4 Regarding the general human rights situation in Turkey, the complainant refers to Amnesty International reports and to Committee's case law[3] as evidence that politically active Kurds are not safe from torture.

State party's observations on admissibility and merits

4.1 In its observations dated 2 July 2014, the State party adds to the factual background of the communication and provides information about the criminal, asylum and return proceedings against the complainant.

4.2 The State party observes that the complainant entered Denmark in November 2010 without any valid travel documents. By the judgement of 11 December 2012 delivered by the District Court of Hillerød, the complainant was convicted of violations of the Danish Criminal Code[4] and the Danish Act on Controlled Substances,[5] having on 4 February 2012 and 4 November 2012, respectively, at the request of the police, identified himself by means of a Danish residence permit bearing a name different from the complainant's and having been in possession of hashish for his own use. He was sentenced to 40 days' imprisonment, expulsion from Denmark and a ban on re-entry for six years.

4.3 With regard to the asylum proceedings, the State party observes that the complainant applied for asylum in Denmark on 13 November 2012. On 31 May 2013, the Danish Immigration Service refused to grant him asylum and that decision was upheld by the Refugee Appeals Board in its decision of 30 August 2013. As his grounds for seeking asylum, the complainant stated to the Danish authorities that, in case of his return to Turkey, he feared being given a long prison sentence because he had been a member of PKK and the Kurdish Communities Union. He also expressed his fear that, as a conscientious objector, he would be given a long prison sentence and ordered to perform his compulsory military service, in which connection he feared being killed by the authorities because he was an ethnic Kurd. The complainant lastly stated that he feared that persons from PKK would kill him because he had fled during a training stay with PKK in mid-2010.

4.4 The State party points to certain inconsistencies and deficiencies in the information the complainant provided during asylum proceedings. Concerning the grounds for the negative asylum decision dated 30 August 2013, the State party observes that the Refugee Appeals Board found that the complainant was not credible because he had made inconsistent and incoherent statements fabricated for the occasion about several key elements of his asylum claim, notably about: (a) his conscientious objection to compulsory military service; (b) his membership of PKK, his related political activities and his detentions in that connection; (c) the episode of the confrontation between government forces and the PKK guerrilla unit that had taken place in the mountains on the way to the PKK training camp and the complainant's reaction to this event; and (d) the television announcement in 2008 about the complainant being listed as wanted by the Turkish authorities.

[3] See communications No. 373/2009, *Aytulun and Güclü v. Sweden*, decision adopted on 19 November 2010 and No. 349/2008, *Güclü v. Sweden*, decision adopted on 11 November 2010.

[4] Sections 164 (1) and 174.

[5] Section 1; see sections 3, 27(1) and 2, schedule 1, list A (1), of the Executive Order on Controlled Substances.

4.5 Specifically, concerning his compulsory military service, the Board reasoned that it appeared unlikely that he would be called up for military service before reaching the age of 20 as, under Turkish military law, individuals are not called to perform compulsory military service before that age. Furthermore, with regard to the complainant's party membership and political activities, two of the Board members reasoned that there is no basis for rejecting his statement that he had been a member of lawful political parties from 2006 to 2010 (the Democratic Society Party and the youth branch of the Peace and Democracy Party) and, in that context, he had attended demonstrations. Kurdish festivals and memorial ceremonies and been apprehended and detained in that connection. However, the Board members found that the complainant had failed to substantiate that he had become conspicuous in any way owing to that or that these political activities constituted any risk to his safety today. The other two Board members found that the complainant's statements must be rejected in their entirety and, accordingly, those two Board members could not accept as a fact that he had been politically active and apprehended and detained in that connection. Those Board members had taken into consideration that the complainant had been unable to give a relevant account of when and how he had been active in the Kurdish political parties and of the instances of detention relied upon.

4.6 The State party observes that the majority of the Refugee Appeals Board found that the remaining part of the complainant's statements about his grounds for asylum had to be rejected as incoherent, lacking in credibility and fabricated for the occasion. Hence, the majority of the Board could not accept as a fact that the complainant had joined PKK. In that respect, it had been taken into particular account that he had made inconsistent statements as to when he joined PKK and that he had replied vaguely and evasively when questioned thereon by the Board. The majority of the Board also considered the complainant's statement about his reaction when he and his friends were caught in crossfire on their way to the PKK training camp to lack credibility. His credibility was further weakened by the fact that he had given elaborating statements to the Board when stating that, before he left Alanya in 2008, it had been announced on television that his cousin had been arrested and that the complainant himself was listed as wanted. Also, this did not in any way seem coherent with his statements that he had been detained by the authorities several times in 2009 for other reasons without the authorities realizing that he was wanted.

4.7 The State party further explains that, as the complainant had not been able to substantiate the grounds for asylum invoked before the Refugee Appeals Board, the majority of the members rejected his claim of being persecuted by the authorities or PKK. The fact that he did not want to perform his compulsory military service did not justify asylum or protection status. According to the background information available, he was not at risk of any disproportionate sanction. The Refugee Appeals Board ruled in its decision that the complainant had to leave Denmark immediately after the decision was handed down, because it found that this was a matter of urgency as a consequence of the criminal offence committed by him.

4.8 Concerning the return proceedings, the State party observes that, on 12 September 2013, the complainant had been summoned for an interview (departure monitoring) by the national police, but failed to show up. An alert was therefore recorded in the Central Criminal Register so that the complainant could be re-accommodated at the Sandholm Reception Centre, and it could be impressed on the complainant that he had to stay in the specified place and report to the national police at the specified times. On 4 November 2013, the Copenhagen police came across the complainant in Copenhagen by chance, detained him pursuant to section 36 of the Aliens Act and placed him at the Ellebæk Institution for Detained Asylum Seekers. In connection with departure monitoring carried out by the national police on 5 November 2013, the decision of 30 August 2013 of the Refugee Appeals Board was served on the complainant. He stated in that connection that he could not return to Turkey and referred to his grounds for seeking asylum. He also stated

that he would be unable to obtain identity documents, but that he would not mind being presented at the Embassy of Turkey. By order of 6 November 2013, the District Court of Hillerød found the detention lawful and extended it until 3 December 2013.[6] By order of 3 December 2013 issued by the District Court of Hillerød, the detention of the complainant was extended until 17 December 2013.[7] On 4 December 2013, the national police contacted the Turkish Embassy and it agreed that the national police would present the complainant at the Embassy on 10 December 2013 for the issuance of travel documents, since he did not have such documents. On 6 December 2013, the national police informed the complainant of the appointment with the Embassy. He stated in that connection that he was unwilling to be presented at the Turkish Embassy. By order of 12 December 2013 issued by the District Court of Hillerød, the District Court decided[8] to permit employees of the national police to present the complainant at the Turkish Embassy in Copenhagen and to order the Danish Prison and Probation Service to remove him from the cell and commit him to the care of the police. The District Court also decided to extend his detention to 9 January 2014 in order to ensure he would be present for the expected return to Turkey. On 17 December 2013, the national police made an attempt to collect the complainant from the Ellebæk Institution at 9.15 a.m. for his presentation at the Turkish embassy at 10 a.m. on the same date. However, he would not leave his cell and it thus became impossible to reach the Embassy for the appointment at 10 a.m.; a new appointment was therefore made for the next day at 9 a.m. On 18 December 2013, the national police collected the complainant from his cell at the Ellebæk Institution. Prison officers fetched him from his cell since he would not voluntarily come along. The complainant had several superficial cuts on his left forearm and his stomach. The prison staff informed the national police that they had occurred just as he was to be fetched and that the cuts were superficial. It was established that the bleeding from the wounds had ceased. The complainant subsequently put on a sweater and a jacket was brought along for him in the car. During the drive to Copenhagen, the complainant was calm and quiet. Before arriving at the Embassy, however, the national police were informed that the complainant's counsel had just filed an appeal with the High Court of the order of 12 December 2013 issued by the District Court of Hillerød, whereupon they turned back and returned to the Ellebæk Institution. On 20 December 2013, the High Court upheld the order of 12 December 2013 issued by the District Court. In a letter dated 2 January 2014, the Committee requested the Government not to deport the complainant to Turkey while his case was being considered by the Committee. The complainant was released on 6 January 2014 and was ordered to report to the immigration authorities.

4.9 The State party also describes the relevant domestic law and the structure and operation of the Refugee Appeals Board and notes that it is an independent, quasi-judicial body. The Board is considered as a court within the meaning of the European Council directive on minimum standards on procedures in member States for granting and withdrawing refugee status.[9] Cases before the Board are heard by five members: one judge (the chairman or the deputy chairman of the Board), an attorney, a member serving with the Ministry of Justice, a member serving with the Ministry of Foreign Affairs and a member appointed by the Danish Refugee Council as a representative of civil society organizations. After completing two terms of four years, Board members may not be reappointed. Under the Aliens Act, Board members are independent and cannot accept or seek directions from the appointing or nominating authority or organization. The Board issues a written decision, which is final and may not be appealed; however, under the Constitution, applicants may bring an appeal before the ordinary courts, which have the authority to adjudicate any

[6] As provided for in sections 37 and section 36 (1) of the Aliens Act.

[7] Ibid.

[8] Pursuant to section 40 (4) of the Aliens Act.

[9] The State party cites article 39 of European Council directive 2005/85/EC.

matter concerning limits on the mandate of a government body. As established by the Supreme Court, the ordinary courts' review of decisions made by the Board is limited to a review of points of law, including any flaws in the basis for the relevant decision and the illegal exercise of discretion, whereas the Board's assessment of evidence is not subject to review.

4.10 The State party comments that, pursuant to section 7, paragraph 1, of the Aliens Act, a residence permit can be granted to an alien if the person falls within the provisions of the Convention relating to the Status of Refugees. For this purpose, article 1.A of that Convention has been incorporated into Danish law. Although that article does not mention torture as one of the grounds justifying asylum, torture may be considered as an element of persecution. Accordingly, a residence permit can be granted in cases where it is found that the asylum seeker has been subjected to torture before coming to Denmark and where his/her fear resulting from the outrages is considered well founded. Such a permit is granted even if a possible return is not considered to entail any risk of further persecution. Likewise, pursuant to section 7, paragraph 2, of the Aliens Act, a residence permit can be issued to an alien upon application if the alien risks the death penalty or being subjected to torture, inhuman or degrading treatment or punishment in case of return to his/her country of origin. In practice, the Refugee Appeals Board considers that those conditions are met if there are specific and individual factors rendering it probable that the person will be exposed to such a real risk.

4.11 The State party observes that decisions of the Refugee Appeals Board are based on an individual and specific assessment of the case. The asylum seeker's statements regarding the motive for seeking asylum are assessed in the light of all relevant evidence, including general background material on the situation and conditions in the country of origin, in particular whether systematic gross, flagrant or mass violations of human rights occur. Background reports are obtained from various sources, including the Danish Refugee Council, other governments, the Office of the United Nations High Commissioner for Refugees, Amnesty International and Human Rights Watch. The Board is also legally obliged to take into account the international obligations of Denmark when exercising its powers under the Aliens Act. To ensure that is done, the Board and the Danish Immigration Service have jointly drafted a number of memorandums describing in detail the international legal protection offered to asylum seekers under, inter alia, the Convention against Torture, the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and the International Covenant on Civil and Political Rights. Those memorandums form part of the basis of the decisions made by the Board and are continually updated.

4.12 The State party considers that the communication is inadmissible as manifestly ill-founded, because the complainant has not established that there are substantial grounds for believing that he will be in danger of being subjected to torture if returned to Turkey, for the reasons set forth by the Refugee Appeals Board and described above in paragraphs 4.4-4.7. The State party considers that the complainant is attempting to use the Committee as an appellate body to have the factual circumstances advocated in support of his asylum claim reassessed. Under paragraph 9 of general comment No. 1 (1997) on the implementation of article 3 of the Convention, the Committee is not an appellate body or a quasi-judicial or administrative body, but rather a monitoring body. Therefore, the Committee should give considerable weight to findings of fact made by the State party's authorities, in this case, the Refugee Appeals Board. In the present case, the Board upheld the negative decision of the Danish Immigration Service based on a procedure in which the complainant had the opportunity to present his views to the Board with the assistance of legal counsel. The Board conducted a comprehensive and thorough examination of the evidence in the case. In the State party's view, with regard to article 12 the complainant has failed to establish a prima facie case for the purpose of admissibility, as nothing seems to indicate that there is a

reasonable ground to believe that acts of torture or ill-treatment have been committed or that an investigation should therefore have been commenced concerning the treatment by the police on 18 December 2013. Furthermore, the State party argues that the complainant is not seen to have claimed at any time to the Danish authorities that he wanted to complain of his treatment and therefore he has not exhausted the domestic remedies.

4.13 Regarding the complainant's criticism of the Danish authorities' failure to examine him for signs of torture, the State party observes that it is at the discretion of the Refugee Appeals Board to ask an asylum seeker to submit to an examination for signs of torture. The decision as to whether it is necessary to make such examination will typically be made at a Board hearing. It depends on the circumstances of the specific case whether such examination is deemed necessary, e.g., the credibility of the asylum seeker's statement about torture. Thus, an examination will not be relevant in cases where an asylum seeker has appeared not credible throughout the proceedings and the Board rejects the asylum seeker's statement about torture in its entirety.[10]

4.14 The State party comments that the burden is upon the complainant to present an arguable case establishing that he runs a foreseeable, real and personal risk of being subjected to torture and that the danger is personal and present. The State party relies entirely on the decision of the Refugee Appeals Board. It refers to the fact that, when interviewed by the Danish Immigration Service on 14 February 2013, the author stated that he had become a member of PKK in 2009, whereas, when interviewed again by the Service on 21 March 2013, he stated that he did not become a member of PKK until mid-2010, but that he had been contemplating it since 2008 or 2009. At the Board hearing on 30 August 2013, the author stated that he did not become active for PKK until 2010, but that he had become a member from the day that he had come into contact with a person in Alanya and told him that he wanted to join PKK. In the State party's view, in view of those inconsistent statements, it cannot be accepted as a fact that the author had joined PKK. Concerning the incident in which the complainant and other members of PKK were allegedly caught in crossfire on a mountain, the complainant stated in his asylum application form of 20 December 2012 that he had realized that he was unable to carry out lawful political work in Diyarbakir and that he had therefore had no other alternative but to go up into the mountains and become part of PKK. When interviewed by the Danish Immigration Service on 14 February 2013, he also stated that he had found out that his political work could not be carried out in a lawful manner, for which reason he had decided to fight for justice by taking up weapons and going to war. At the Board hearing on 30 August 2013, he stated that the intention had been that he was to receive military training and lectures in political ideology in order to join the guerrilla unit. In that light, the State party also finds that the complainant's statement that he had allegedly reacted by becoming afraid when caught in crossfire on the mountain lacks credibility. The State party also relies on the Refugee Appeals Board's finding the complainant's statement about his cousin's arrest and the complainant being wanted in that connection lacked credibility. It is observed in that connection that he stated, when interviewed by the Danish Immigration Service on 14 February 2013, that his cousin had been arrested in 2008 and, later, that he himself had been detained by the police several times between 2009 and 2010. This also appeared on his asylum application form of 20 December 2012. When asked at the Board hearing on 30 August 2013 whether the Board had correctly understood that the complainant had been detained most recently in Diyarbakir in 2010 and whether he knew why the police had not told him on that occasion that he was listed as wanted, he replied that the reason was that he came from Konya and that he had first been listed as wanted in the Konya area. In the State

[10] The State party also provides extensive background information on the asylum process in Denmark and the operating procedures of the Refugee Appeals Board.

party's opinion, it is unlikely that the authorities had not listed the complainant as wanted in all of Turkey two years after his cousin's arrest. The State party considers that, in the instant case, the complainant's statements appear inconsistent, elaborative and unlikely on crucial points and does not find that this can be explained by the author having allegedly been subjected to torture or other abuse by the Turkish authorities during detention. Furthermore, the State party observes that the instances of detention, the specific times of which the complainant has been unable to account for in detail, lasted a few days, after which the complainant was released unconditionally.

4.15 Concerning the complainant's claim under article 12, the State party observes that, concerning the elements necessary to initiate an investigation, the State party relies on the Committee's decision in *Abad v. Spain*,[11] as opposed to the present case, in order to demonstrate that the latter is clearly distinguishable. The State party asserts that the complainant was detained by decision of the court and there is no information indicating that his health gave reasonable grounds to fear that the imprisonment would constitute inhuman treatment within the meaning of the Convention. Furthermore, nothing in the treatment of the complainant by the police on 18 December 2013 ought to have given grounds for initiating an investigation pursuant to article 12 of the Convention.

4.16 For the reasons detailed above, the State party considers that the communication is without merit.

The complainant's comments on the State party's observations on admissibility and the merits

5.1 In his comments dated 7 October 2014, the complainant provides additional information about a medical torture examination done without charge by Amnesty International in Denmark. On 17 September 2014, the complainant was examined by two Danish doctors on behalf of Amnesty International. Their medical report dated 25 September 2014 concluded that: "there is consistency between the described torture and the signs and symptoms resulting from the current investigation". It also established that the complainant suffers from post-traumatic stress disorder. He further submits that he would not have the means to pay for a medical examination himself.

5.2 The complainant also reiterates his comments regarding the procedural necessity of a medical examination for signs of torture, providing information about another case of a Turkish national of Kurdish ethnicity claiming asylum in Denmark, in which the Board decided on its own initiative to send that individual to hospital for an examination for signs of torture. The complainant argues that this is the procedure that should have been applied in the present case. In addition, he refers to the Committee's general comment No. 1 and its most recent concluding observations on Turkey ascertaining the general situation in the country and the past instances of torture as the two main factors to be taken into consideration. The complainant argues that the majority of the Refugee Appeals Board members were "ignorant about the test". Given the split among them concerning the complainant's credibility, the medical examination was crucial not only for the assessment of the future risk of torture, but also essential in understanding why, as a torture victim, the complainant may have difficulty in remembering and explaining what has happened to him. He claims that he should have had the benefit of the doubt.

5.3 As to the complaint under article 12 of the Convention, the complainant details further that he filed a complaint about the treatment he had suffered while in custody, the lack of medical assistance and the lack of investigation into the incident. On 20 December

[11] Decision of 14 May 1998.

2013, his counsel requested information about the 18 December 2013 incident in the prison in order to file the complaint. A prison report dated 18 December indicated that the complainant started a hunger strike on 17 December 2013. The use of force was initiated on 18 December 2013 in the morning, notably the complainant was handcuffed for about an hour in order to stop his attempts to harm himself. In connection to the scheduled transportation to the Turkish Embassy, the complainant had cut himself. The cuts were assessed as "superficial" by the prison staff. The complainant argues that prison guards and police officers are not trained to provide such an assessment. Furthermore, he reiterates that no doctor or nurse examined him before the police drove him towards the Turkish Embassy in Copenhagen. The complainant submits that the use of force against him amounts to inhuman and degrading treatment. He further contends that he was naked when several prison guards attacked him in his cell and, while he was still bleeding, forced him to the floor on his front and handcuffed him on his back. This is disputed by the State party but, according to the complainant, no proper investigation of the incident was initiated. No medical assistance was provided by trained medical personnel until after his return. On 30 December 2013, the complainant filed a complaint claiming violation of articles 12 and 16 of the Convention. On 8 January 2014, the prison rejected any wrongdoing with regard to the incident. On 26 February 2014, the complainant appealed to the Ministry of Justice. On 22 May 2014, the Ministry rejected the appeal, stating that it was a matter to be addressed to the courts. The complainant submits that all the domestic remedies were exhausted as the issue was dealt with by the City Court in 2013 and the High Court, respectively, on 12 December and on 20 December 2013. Subsequently, on 20 February 2014. the Supreme Court refused to consider the case on appeal.

5.4 The complainant also criticizes specific observations made by the State party concerning the facts of the case. Firstly, he points out that he has had no access to any torture victim rehabilitation programme while in Denmark and, on the contrary, was detained for six months between November 2012 and May 2013 and for two months between November 2013 and January 2014. Regarding the criminal proceedings against him, he submits that the "criminal" offences he committed were possession of hashish for his own use and possession of a fake identity card. He claims that many torture victims without proper treatment use hashish for "self-medication". Under Danish criminal law, he was sentenced to 40 days' imprisonment and expulsion with a 6-year re-entry ban. With respect to the District Court decision dated 12 December 2013, permitting the national police to present the complainant to the Turkish Embassy in Copenhagen and ordering the Danish Prison and Probation Service to remove him from the cell and to commit him to the care of the police, the complainant maintains that the State party omits to inform the Committee that he appealed that decision. He further states that the High Court decided in favour of the police, allowing them to take the complainant to the Turkish Embassy by force on 20 December 2013. However, the police had already tried to take him to the Embassy on 17 December and again on 18 December. The complainant also maintains that, from the State party's submission, it can be established as fact that no medical staff were present at the incident to establish that the bleeding from his wounds has stopped. He further contests the State party's explanation that he put on a sweater, as it implies that his hands were free. He maintains that he was handcuffed and only after the police refused to take him into their car naked and still bleeding did the prison staff take him back in the cell, force him to the floor, take off his handcuffs, dress him in a sweater and then handcuff him again. The complainant also challenges the observation made by the State party as to the reason why the police returned to the prison instead of handing him over to the Turkish Embassy. He submits that his counsel had filed the appeal with the High Court against the order of 12 December 2013 earlier than claimed and not on 18 December, when the "operation" had already started. He further alleges that the State party is lying about that because the present communication is highly controversial in the Danish context.

5.5 The complainant also reiterates his comments regarding the lack of possibility of review of a first-instance asylum decision. He reiterates that a decision by the Board cannot be appealed to the ordinary Danish Courts, which is a major fair trial problem for torture victims. He further states that, in order to enjoy the benefit of the doubt, a medical torture examination is a precondition to establish whether the complainant is a torture survivor. Since the majority of the Board members rejected his credibility and did not give him the benefit of the doubt, the Danish authorities should change their practice to allow more torture examinations to take place.

5.6 The complainant challenges the State party's observations on the admissibility, stating that, with reference to the medical torture examination report from Amnesty International and the Committee's most recent concluding observations on Turkey, the communication is well founded and admissible with regard to article 3 of the Convention. He agrees with the State party's observation that the Committee is used as an appellate body as, under Danish law, it is not possible to appeal the Refugee Appeals Board decisions, even in cases like the present one, in which the Board split into three different groups in the decision-making process. The complainant argues that the Committee should not give weight to the findings of the majority of the Board members since those findings were not based on a medical torture examination. With regard to articles 12 and 16 of the Convention, the complainant contests the State party's argument that domestic remedies have not been exhausted. To that end, he submits a translation in English of his complaint dated 30 December 2013 about violations of articles 12 and 16 of the Convention.

5.7 As to the merits, the complainant reiterates with regard to article 3 of the Convention the same facts stated in the initial communication, notably the past instances of torture, based on the torture examination report and the background information about the use of torture in Turkey. He argues that he is running a foreseeable, real and personal risk of being subjected to torture on return, because of his involvement with Kurdish organizations before fleeing and because he is known to the Turkish authorities. He further states that, on 2 October 2014, the Turkish Parliament extended the validity of the decision that Turkish forces can cross the border to the Syrian Arab Republic and Iraq and fight against the Kurdish groups in those countries. If returned to Turkey he would be obliged to serve in the army, which he would have to refuse to do. According to the majority of the Refugee Appeals Board members, the sentence he would receive for not performing military service is not a disproportionate sanction. The complainant claims he does not fear the prison sentence for refusing military service but the torture and inhuman treatment that he will suffer in prison as a young Kurdish with former ties to Kurdish organizations. He also fears that the Turkish Embassy has carried out surveillance of him in Denmark and already have him on file.

5.8 Regarding articles 12 and 16 of the Convention, the complainant reiterates he was attacked in his cell by several prison guards, forced to the floor and handcuffed on his back while he was naked and bleeding from his self-inflicted wounds. As the police refused to take him in the car naked and bleeding, he was brought back to his cell where the prison guards dressed him in a sweater and handcuffed him again. The complainant claims this amounts to inhuman and degrading treatment of a survivor of torture and has not been investigated by the Danish authorities. On the contrary, they deny any wrongdoing and the complainant's appeal to the Danish Supreme Court of the High Court decision was not allowed.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party contests that the complainant has exhausted all available domestic remedies with regard to article 12 of the Convention. However, the Committee observes that the State party has not contested that: on 26 February 2014, the complainant filed an appeal with the Ministry of Justice in relation to his allegations under article 12; on 22 May 2014, the Ministry rejected the appeal stating that this is a matter to be addressed to the Courts; and the matter had been addressed by the City Court and by the High Court, respectively, on 12 December and 20 December 2013. In the circumstances, the Committee considers that it is not precluded by article 22 (5) (b) of the Convention from examining the present case.

6.3 The Committee recalls that for a claim to be admissible under article 22 of the Convention and rule 113 (b) of its rules of procedure, it must rise to the basic level of substantiation required for purposes of admissibility.[12] The Committee notes the State party's argument that the communication is manifestly ill-founded due to a lack of substantiation. The Committee considers, however, that the arguments put forward by the complainant raise substantive issues under articles 3, 12 and 16 of the Convention, and that those arguments should be dealt with on the merits. Accordingly, the Committee finds no obstacles to the admissibility and declares the communication admissible.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

7.2 With regard to the complainant's claim under article 3 of the Convention, the Committee must evaluate whether there are substantial grounds for believing that he would be personally in danger of being subjected to torture upon return to Turkey. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned.[13] It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual

[12] See, inter alia, communication No. 308/2006, *K.A. v. Sweden*, inadmissibility decision of 16 November 2007, para. 7.2.

[13] See, inter alia, communication No. 470/2011, *X. v. Switzerland*, decision adopted on 24 December 2014.

concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

7.3 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable (para. 6), the Committee notes that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a "foreseeable, real and personal" risk.[14] The Committee further recalls that, in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned,[15] while at the same time it is not bound by such findings and instead has the power, provided by article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

7.4 In assessing the risk of torture in the present case, the Committee notes the complainant's contentions that there is a foreseeable, real and personal risk that he will be imprisoned and tortured if returned to Turkey because he was a politically active member of several Kurdish parties, including PKK, and in that connection was detained and tortured by the Turkish police on several occasions in the past; that he had declared himself a conscientious objector and refused to perform his compulsory military service; and that he was wanted by the Turkish authorities. The Committee also notes the State party's observation that its domestic authorities found that the complainant lacked credibility because, inter alia, he made conflicting, fabricated statements regarding his compulsory military service and his PKK membership; his claims concerning his several detentions and subsequent unconditional release while he was allegedly wanted by the authorities were implausible; he made vague replies to questions about when, where and how he has joined PKK; and his reaction to the episode of the confrontation between the PKK guerrilla unit and the authorities on the way to the PKK training camp in the mountains was also not credible. The Committee also notes that the incidents that led the complainant to leave Turkey occurred between 2006 and 2010. It also observes that the complainant has alleged facts and provided some evidence concerning the critical issue of whether he currently runs a risk of torture if returned to Turkey at the time of the communication, five years later.[16]

7.5 The Committee takes note of the complainant's claims that he was detained by the police several times during the above-mentioned period for periods of 3-10 days; that he was apprehended in the street, a sack was put over his head and he was then driven to an unknown place where he was isolated in a cell in the basement with no windows or furniture but a low-hanging lamp with a bright light; that he had to sleep on the floor and he had no access to toilet facilities; that for food and drink he had water and a piece of bread; that several times when he had asked for water a glass of urine was poured over him; that he was forced to urinate and defecate on the floor of the cell and, when that happened, he was subjected to blows and threats; and that he was questioned about his activities in the Peace and Democracy Party and pressured to become an informant for the Turkish authorities. The Committee further notes the complainant's claim that he was tortured by means of: random blows with a net full of oranges on the face, chest and back, random beating with a hard, round and thick stick to the legs, arms and back, repeated blows to the

[14] See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003; No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

[15] See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

[16] See communication No. 429/2010, *Sivagnanaratnam v. Denmark*, decision adopted on 11 November 2013, para. 10.5.

soles of the feet with a Tommy and being doused with cold water from a pressure washer, on occasions until he threw up blood and lost consciousness; and that, on one occasion, he was held in isolation in a cell with speakers installed, through which he was told that his mother was in the next cell and would be tortured. The Committee also takes note of the complainant's claim that, during a celebration of the Kurdish national day, he was pushed into a police officer carrying a shield, was thrown on the ground, broke his left arm and was detained on the spot, and that his broken arm was not medically treated.

7.6 The Committee recalls that, although it is for the complainant to establish a prima facie case for an asylum request, it does not exempt the State party from making substantial efforts to determine whether there are grounds for believing that the complainant would be in danger of being subjected to torture if returned.[17] The Committee considers that, although the complainant did not provide documentary evidence to support his asylum application, the subsequent medical torture examination provided by Amnesty International constituted evidence in support of a crucial element of his claim. Accordingly, the Committee considers that, while the State party has raised serious credibility concerns, it drew an adverse credibility conclusion without adequately exploring a fundamental aspect of the complainant's claim. The Committee therefore considers that, by rejecting the complainant's asylum application without ordering a medical examination, the State party failed to sufficiently investigate whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Turkey. As such, the Committee considers that, in the circumstances, the deportation of the complainant to Turkey would constitute a violation of article 3 of the Convention.

7.7 With regard to the complainant's claim under articles 12 and 16 of the Convention, the Committee takes note of the complainant's claim that, while imprisoned, on 18 December 2013, he suffered acts of cruel, inhuman and degrading treatment by the Danish prison and police authorities who attempted to take him forcibly to the Turkish Embassy. It further notes that the exact circumstances of the incident and the intensity of the force used are disputed by the parties. The Committee observes that, according to the State party's submission, when the police officers showed up to take the complainant to the Turkish Embassy, prison officers had to bring him, presumably by force, from his cell, since he would not voluntarily come along and that, at that point, he was naked from the waist up and had several bleeding cuts on his left forearm and his stomach. The Committee recalls its jurisprudence that a criminal investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might have been involved therein.[18] In the present case, the Committee notes that, despite the appearance of the complainant clearly showing that he had been injured and despite his subsequent complaints, no investigation appears to have been initiated into the events. On the contrary, the police accepted at face value the explanation that the complainant had hurt himself, no medical examination was conducted and the police officers proceeded with his forcible delivery to the Turkish Embassy. In those circumstances, the Committee is of the view that the authorities of the State party violated the requirements of article 12, read in conjunction with article 16, of the Convention.

8. In the light of the above, the Committee, acting under article 22 (7) of the Convention, is of the view that the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainant to Turkey or to any

[17] See, inter alia, communication No. 464/2011, *K.H. v. Denmark*, decision adopted on 23 November 2012, para. 8.8.

[18] See, inter alia, communications No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, and No. 161/2000, *Dzemajl et al. v. Yugoslavia*, decision adopted on 21 November 2002, para. 9.4.

other country where he runs a real risk of being expelled or returned to Turkey. The Committee also finds that the State party violated the requirements of article 12, read in conjunction with article 16, of the Convention.

9. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken to respond to the above observations.